IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 4967 of 2005

Between:

Chief engineer/O&M M/s Vijayawada thermal Power Station
Ibrahimpatnam, Krishna District rep. by the Chief General manager
(HR)/APGENCO Vidyut Soudha, Hyderabad.

..... PETITIONER

AND

1 Asst.P.F.Commissoner Sub Regional Office, Krishna Nagar, Guntur-6.
2 The Branch Manager State Bank of Hyderabad VTPS branch
Ibrahimpatnam, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the prohibitory order No.AP/SRO/5341/Comp.II/KST/1703/1706, dt.4/7/2005 and the consequential order No.AP/5341/SRO/GNT/Comp.II/2005 dt.3.3.205 issued by the 1st respondent as illegal, arbitrary unwarranted and in violation of not only statutory provisions of the EPF and MP Act, 1952, but also in violation of principles of natural justice and pass such other order or further orders.

Counsel for the Petitioner: MR.N.VENKATRAMA REDDY

Counsel for the Respondent No.1: MR. B. NARASIMHA SARMA

The Court at the admission stage made the following :

O R D E R:

This writ petition is filed seeking to declare the order dated 05/07-2-2005 as well as the consequential order dated 03-03-2005 passed by the first respondent as arbitrary and illegal and in violation of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

The grievance of the petitioner is that before passing the said order dated 05/07-02-2005, neither a notice as required under the statute was issued nor an opportunity to be heard was provided to it at any point of time. Hence, according to the petitioner the impugned order as well as the consequential order are in violation of the principles of natural justice.

The learned counsel for the petitioner in support of his contentions placed reliance upon the orders of this Court dated 03-12-2004 and 16-08-2004 in W.P.Nos. 24209 of 2003 and 14418 of 2004. The said decisions were rendered following the ratio laid down by the Apex Court in *FOOD CORPORATION OF INDIA VS. PROVIDENT FUND COMMISSIONER,* holding that without summoning and examining the contractor, who engaged the employees, the Corporation cannot fix up the liability on the principal employer. Accordingly, the said writ petitions were allowed setting aside the impugned orders therein.

The learned standing counsel appearing for the respondents points out that in the case on hand the notice as required under the statute was issued to the contractors but the same was returned unserved. However, the specific case of the petitioner is that though the petitioner sought for copies of the proceedings, the same were

not furnished before passing the impugned order and therefore the order is in violation of the principles of natural justice.

Having heard the learned counsel for the petitioner as well as the learned standing counsel for the respondents and since nothing has been placed before this Court to show that the petitioner was furnished the copies of the required proceedings before passing the impugned order, in my considered opinion the matter requires reconsideration.

Accordingly, the impugned order dated 5/7-2-2005 is set aside and the Writ Petition is disposed of directing the respondents to furnish the copies of the proceedings as sought by the petitioner in their letter dated 23-02-2005 within a period of two weeks from the date of receipt of this order. Thereafter, it is open to the petitioner to submit the necessary explanation to the action proposed under the impugned notice dated 5/7-2-2005 within a period of two weeks. If any such explanation is received within the time specified above, it is open to the respondents to determine the liability of the petitioner, if any, and pass appropriate orders in accordance with law. No order as to costs.

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(**G. ROHINI, J**)

Date: 15-03-2005

ghn

To

1 Asst.P.F.Commissoner Sub Regional Office, Krishna Nagar, Guntur-6.

2 The Branch Manager State Bank of Hyderabad VIPS branch
Ibrahimpatnam, Krishna District.

3 Two CD copies.

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.4967 OF 2005

OPERATIVE PORTION (BY WIRE):

Accordingly, the impugned order dated 5/7-2-2005 is set aside and the Writ Petition is disposed of directing the respondents to furnish the copies of the proceedings as sought by the petitioner in

their letter dated 23-02-2005 within a period of two weeks from the date of receipt of this order. Thereafter, it is open to the petitioner to submit the necessary explanation to the action proposed under the impugned notice dated 5/7-2-2005 within a period of two weeks. If any such explanation is received within the time specified above, it is open to the respondents to determine the liability of the petitioner, if any, and pass appropriate orders in accordance with law. No order as to costs.

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(**G. ROHINI, J**)

Date: 15-03-2005

Note:

1. Issue wire at party's costs.
2. Please send the bundle to the Court Masters Section after dispatch of the wire order.

B/o

ghn